IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
ANTICIPATORY BAIL APPLICATION NO. 1431 OF 2015

Sudhir Ramchandra Desai ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1432 OF 2015

Abasaheb Vithoba Desai ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1433 OF 2015

Sudhakar Shamrao Desai ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1434 OF 2015

Krishna Balappa Kamble ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1435 OF 2015

Tukaram Ganapati Patil ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1436 OF 2015

Sunil Shrikant Mokashi ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1437 OF 2015

Sanjay Ramchandra Karnekar ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1438 OF 2015

Gajanan Shivram Kalekar ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1439 OF 2015

Arun Shamrao Desai ...Applicant
Versus
The State of Maharashtra ...Respondent

WITH
ANTICIPATORY BAIL APPLICATION NO. 1440 OF 2015

Vijay Annapa Shinde ...Applicant
Versus
The State of Maharashtra ...Respondent

Mr. Anand Shivaji Patil for the Applicants

Ms. Veera Shinde, A.P.P for the Respondent-State

CORAM : REVATI MOHITE DERE, J.
THURSDAY, 21st JULY, 2016

P.C. :

1. Heard learned Counsel for the applicants and the learned A.P.P for the State.

2. By these applications, the applicants seek pre-arrest bail in connection with C.R. No. 141 of 2015 registered with the Gadhinglaj Police Station, for the alleged offences punishable under Sections 406, 420, 467, 468, 470, 477A, 120B of the Indian Penal Code.

3. At the outset, it is necessary to mention that the aforesaid applications along with other applications were heard by me and were reserved for orders. However, due to heavy board, orders could not be passed. Whilst going through the papers, I felt that it was necessary to obtain clarifications on certain aspects and hence, the matters were listed on Board for directions on 22nd June, 2016, for obtaining certain clarifications. The applications were directed to be listed on 27th June, 2016. However, for two weeks, there was change in the assignment and the matters could not be taken up. Thereafter, learned A.P.P sought time on a few dates, as the Investigating Officer was not available and accordingly the matters have been listed again today.

4. The learned Counsel for the applicants as well as the learned

A.P.P for the State were heard earlier. Even today, I have heard them on certain issues.

5. According to the informant- Shri D. A. Chougule, retired Assistant Registrar, Cooperative Audit Department, Kolhapur, he conducted a re-audit of the Shivaji Sahakari Bank, Gadhinglaj, on the directions of the Deputy District Registrar, Cooperative Department, Kolhapur dated 27th January, 2015 and submitted his report on 14th August, 2015. He has stated that after obtaining legal opinion of the District Government Pleader, Kolhapur and after obtaining permission from the Deputy District Registrar, Co-operative Department, Kolhapur, he lodged a complaint, which was registered vide the aforesaid CR for the aforesaid offences as against the applicants and several others. According to the informant, the applicants along with other co-accused misappropriated huge money from the said Bank and used the said amounts for their own benefit. He has alleged that an amount of Rs. 1331.32 lakhs was misappropriated by all the accused in furtherance of their common intention during the period 1st April, 1998 to 31st March, 2010. According to the informant, all the accused had duped the depositors of crores of

rupees by committing criminal breach of trust and by disbursing loans and by illegally withdrawing huge amounts. The informant - Shri Chougule has in his complaint dated 24th August, 2015 listed the allegations as against all the accused under various heads, i.e. (i) loans taken on fixed deposits; (ii) misappropriation from the IDBI Bank Account; (iii) fraud in loan account of Matoshri Ramabai Ambedkar Backward Class Cooperative Textile Mill, Kodoli; (iv) misappropriation of bank account of Mastoshree Ramabai Ambedkar Spinning Mill; (v) fraud in cash; (vi) misappropriation in respect of 50% subsidy scheme given by the District Industrial Centre, Kolhapur, for small textile powerloom owners; (vii) issuance of No Dues Certificate; (viii) fake loan accounts; (ix) transaction from dormant/dead accounts, (x) misappropriation in respect of the Central Government Agricultural Debt and Interest Waiver Scheme, 2008; (xi) Fraud and misappropriation in Branch and Head Office Account; and (xii) misappropriation in respect of the State Government Agricultural Waiver of Audit and Relief Scheme, 2009. The informant has specifically spelt out the role played by each of the accused in the complaint, under each of the aforesaid heads.

6. In Anticipatory Bail Application No. 1431 of 2015, the applicant-Sudhir Ramchandra Desai, was the General Manager of the said Bank, looking after all the branches, from the year 2002 to 2010. The said applicant is stated to have been involved under various heads enlisted above by virtue of his designation as a General Manager.

7. The applicant in Anticipatory Bail Application No. 1432 of 2015, is Abasaheb Vithoba Desai, who was the then Branch Manager of the Gadhinglaj Branch. The said applicant is stated to have worked in all the three Branches of the said Bank i.e. Kolhapur Branch from 1998 to 2000; Harali Branch from 2000-2002 and Gadhinglaj Branch from 2002-2008. It is alleged that the major allegations as against this applicant are from the period when he was working as a Branch Manager at the Gadhinglaj Branch from 2002-2008.

8. The applicant in Anticipatory Bail Application No. 1433 of 2015 is Sudhakar Shamrao Desai, the Branch Manager of the Gadhinglaj Branch. He is stated to have been the Branch Manager during the period 1st October, 2009 to 2010. It is alleged that prior to his designation as a Branch

Manager, the applicant was working as a Clerk in the Gadhinglaj Branch from 2002-2009. The said applicant is alleged to be involved in the fraud committed in the loan account of Matoshri Ramabai Ambedkar Soot Girni; fraud in cash; issuance of no dues certitificate; fake loan account transactions relating to dead/dormant accounts and other heads.

9. The applicant in Anticipatory Bail Application No. 1434 of 2015 is Krishna Balappa Kamble, who was the Branch Manager of the Kolhapur Branch from 2003-2008. He is also stated to have been the Accounts Officer from the period 2008-2012 in the Accounts Office at the Headquarters at Gadhinglaj. However, as the Accounts Officer, there are no allegations qua the said applicant. The said applicant, as a Branch Manager is alleged to have been involved in the misappropriation on FDR loan account with the Kolhapur Branch; fraud in IDBI Bank, Kolhapur Branch and under other heads.

10. The applicant in Anticipatory Bail Application No. 1435 of 2015 is Tukaram Ganapati Patil, who was a Clerk-cum-Cashier in the Kolhapur Branch from the period 1st October, 1998 to 2009 and a Branch

Manager at the Kolhapur Branch from 2009-2010. The allegations against the said applicant are with respect to the fraud in the IDBI Bank; fraud in the loan account of Matoshri Ramabai Ambedkar Sahakari Soot Girni; and misappropriation in the account of Matoshri Ramabai Ambedkar Sahakari Soot Girni Ltd.

11. The applicant in Anticipatory Bail Application No. 1436 of 2015 is Sunil Shrikant Mokashi, who was the Clerk/Cashier at the Kolhapur Branch during the period 2006 to 2009. The allegations against the said applicant are with respect to the fraud committed in the IDBI Bank Current Account, Kolhapur Branch; transactions relating to dormant/dead account and fraud and misappropriation in the Branch and Head Office Account; and misappropriation with regard to Agriculture Waiver of Debts and Debts Relief Scheme, 2009, pertaining to the State Government.

12. The applicant in Anticipatory Bail Application No. 1437 of 2015 is Sanjay Ramchandra Karnekar, who was the Clerk at the Gadhinglaj Branch from 2000-2010 and was Cashier-cum-Clerk from 2010 to 2012 at the Gadhinglaj Branch. The allegations as against the said applicant are

under the heads - fraud in cash and transactions relating to dormant/dead accounts.

13. The applicant in Anticipatory Bail Application No. 1438 of 2015 is Gajanan Shivram Kalekar, who was the Branch Manager at Harali Branch from January, 2008 to September, 2009. The said applicant was a Clerk, initially from 1985 to 2007 at the Gadhinglaj Branch; a Recovery Officer from January, 2007 to December, 2007 at the Headquarters, Gadhinglaj; and a Branch Manager at Harali from January, 2008 to September, 2009. The allegations against this applicant pertain to the following heads - misappropriation in respect of 50% subsidy for small scale industries to power looms received from District Industrial Centre, Kolhapur; Central Government Agriculture Waiver of Debts and Debts Relief Scheme, 2008; fraud and misappropriation in Branch and Head Office Account; and State Government Agriculture Waiver of Debts and Debts Relief Scheme, 2009.

14. The applicant in Anticipatory Bail Application No. 1439 of 2015 is Arun Shamrao Desai, who was the Recovery Officer at the

Headquarters at Gadhinglaj from 2007-2012. The allegations as against the applicant are under the heads – No Dues Certificate; Central Government Waiver of Debts and Debts Relief Scheme, 2008; and State Government Agriculture waiver of debts and debts relief Scheme, 2009**.**

15. The applicant in Anticipatory Bail Application No. 1440 of 2015 is Vijay Annapa Shinde, who was a Cashier at the Gadhinglaj Branch for the period 2007-2009 and thereafter, as a Recovery Officer from 2009 to 2012 at Gadhinglaj. The allegations against the said applicant is under the heads; fraud in deposit and loan account of Matroshree Ramabai Ambedkar Sahakari Soot Girni; fraud and misappropriation in the Branch and Head Office Account; and of misappropriation of the State Government Agricultural Waiver of Debts and Debts Relief Scheme, 2009.

16. Learned Counsel for the applicants submitted that the allegations against the applicants pertain to the period 1998 to 2010. He submitted that during the said period, audit was done and nothing was found in the said audit. He submitted that it is only in 2015, when re-audit was done on the directions of the Deputy District Registrar, Cooperative

Department, Kolhapur dated 27th January, 2015, that a report came to be submitted on 14th August, 2015, pursuant to which, after obtaining legal opinion of the District Government Pleader, Kolhapur and after obtaining permission from the Deputy District Registrar, Co-operative Department, Kolhapur, the aforesaid FIR was lodged as against the applicants and others. He submitted that re-audit was not permissible in view of the Circular dated 8th April, 1988 and after a lapse of five years. He submitted that the allegation against the applicants is that they misappropriated huge amount of money alongwith the other co-accused. He submitted that the applicants have co-operated with the investigation and as such, the custody of the applicants is not required. He further submitted that the case is essentially based on documentary evidence and that the said documents are already in the custody of the Investigating Officer.

17. Learned Counsel for the applicants further submitted that inquiry under Section 88 of the Maharashtra Cooperative Societies Act has already been initiated by the authorized Officer appointed under Section 88 of the said Act, and that in the said inquiry, the liability of the applicants will be fixed if it is found that the applicants had misappropriated the said

amount. He submitted that considering the nature of allegations, the custody of the applicants is not required.

18. Learned A.P.P opposed the bail applications. She submitted that there is ample material to show the complicity of the applicants. She relied on several documents under each of the heads to show the role played by each of the applicants and how the applicants were involved in the misappropriation and the fraud committed by the applicants. She submitted that huge amounts of money were misappropriated by all the co-accused. According to her, some of the relatives of the applicants are not coming forward, who were the actual beneficiaries of the said misappropriation and therefore, the custody of the applicants is necessary. She further submitted that although the allegations pertain to the year 1998 to 2010, there are certain documents which the Investigating Officer has not been able to seize and therefore, the custody of the applicants is necessary.

19. Perused the papers, including the affidavits filed by the Investigating Officer in all the aforesaid applications, as well as the

documents tendered by the learned A.P.P to show the role of each of the applicants in the transactions. The material on record tendered by the learned A.P.P, *prima facie*, shows the complicity of the applicants. However, it is pertinent to note that the transactions of which misappropriation is alleged, is during the period 1998 to 2010. The complaint was lodged only in 2015. Most of the documents are in the custody of the police. What cannot be lost sight of, is the passage of time and the fact that majority of the documents are already in the possession of the Investigating Officer. Merely for recovery of monies, the custody of the applicants is not warranted. Even otherwise, the applicants have been attending the concerned Police Stations as and when called for by the Investigating Officer. It also appears that proceedings under Section 88 of the Maharashtra Cooperative Societies Act are pending and that notices have been issued to all the applicants. If at all, the the applicants are found liable, their liability will be fixed in the said proceedings.

20. Considering the aforesaid, the applicants are granted pre-arrest bail on the following terms and conditions :

ORDER

(i) In the event of the arrest, the applicants be enlarged on bail on furnishing P.R. Bond in the sum of Rs.25,000/- each, with one or two sureties in the like amount ;

(ii) The applicants shall report to the Investigating Officer of the concerned Police Station, twice a week, on every Monday and Wednesday from 10:00 a.m. to 12:00 noon, till the filing of the charge-sheet;

(iii) The applicants shall not tamper with the evidence, attempt to influence or contact the informant, witnesses or any person concerned with the case.

(iv) The applicants shall inform their latest addresses and/or change of residences or mobile details, if any, from time to time to the Investigating Officer of the concerned Police Stations.

21. The Applications are allowed in the aforesaid terms and are accordingly disposed of.

22. It is made clear that the observations made herein are *prima facie* and are confined to these applications and the learned Judge to decide the case on its own merits, uninfluenced by the observations made herein.

23. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.